



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed December 20, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on February 13, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$2,297 for the period of August 6, 2012 – July 31, 2013 and \$718 for the period of August 12, 2013 – November 30, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Belinda Bridges

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner has lived with her mother and siblings at all times relevant herein.

3. On August 3, 2012, the Petitioner applied for FS benefits. She was 19 years old. She reported an address of [REDACTED]. She reported a household size of one. She reported employment at [REDACTED], 6 hours/week at \$10.50/hour. She also reported receiving unemployment compensation benefits of \$47/week since July 7, 2012.
4. On August 6, 2012, the agency conducted a FS interview with the Petitioner. The Petitioner reported that her mother owns the home she lived in but also reported that her mother did not live with her. She reported that she pays rent of \$250/month.
5. On August 28, 2012, the agency issued a Notice of Decision informing the Petitioner that she would receive \$200/month in FS benefits effective September 1, 2012. The notice informed the Petitioner that this was based on her gross monthly income of \$662.11 from [REDACTED] and unemployment compensation benefits.
6. On February 6, 2013, the agency issued a Notice of Decision informing the Petitioner that she would receive FS benefits of \$200/month effective February 1, 2013 based on reported gross monthly income of \$399.90 from unemployment compensation benefits.
7. On August 15, 2013, the agency processed Petitioner's SMRF. It issued a Notice of Decision informing the Petitioner that she would receive \$129 for August, 2013 and \$200/month effective September 1, 2013. The notice informed her that this was based on no reported household income.
8. On October 7, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would be reduced to \$189/month effective November 1, 2013. The notice informed her that this was based on no reported household income.
9. On October 18, 2013, Petitioner's mother applied for FS benefits. The Petitioner was not reported as being in the household.
10. On October 24, 2013, the agency received an employment verification from [REDACTED]. The verification indicates that Petitioner's mother [REDACTED] has been employed at [REDACTED] since July 1, 2011. It verified her current hours as 32 hours/week at \$13.97/hour. It also provided actual gross wages for the last 30 days as \$1229.50.
11. On November 8, 2013, the agency received an employment verification from [REDACTED]. The verification indicates that [REDACTED] has been employed at [REDACTED] since October 29, 2012. It verified her hours as 35 – 60 hours/week at \$15.25/hour. It also provided actual gross wages for the last 30 days as \$2,348.51.
12. Petitioner's two siblings each receive unearned SSI of \$250/month for total unearned household income of \$500/month.
13. On November 4, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would end on December 1, 2013 because she is no longer in her mother's household.
14. On November 8, 2013, the agency issued Notifications of FS Overissuance to the Petitioner informing her that the agency intends to recover an overissuance of FS benefits in the amount of \$2,297 for the period of August 6, 2012 – July 31, 2013 and \$718 for the period of August 12, 2013 – November 30, 2013.
15. On December 20, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b), see also, FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also, FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. *Id.*

"Discovery" is “the date that the ESS [agency] became aware of the potential that an overissuance may exist.” BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012). In this case, the agency became aware of a potential for an overissuance in October, 2013. The agency alleges client error in failing to accurately report household composition and income, resulting in the overissuance. I conclude that there was an overissuance as a result of client error. Therefore, the agency may recover for the period of August, 2012 – November, 2013.

At the hearing, the Petitioner did not dispute that she lived with her mother and two siblings during the overpayment period. She did not dispute that she applied for benefits and did not report her mother and siblings in the household. At the time of application, she was 19 years old. She testified that she believed she could apply for benefits for just herself.

In determining eligibility for FS, the agency must budget the non-exempt earned and unearned income of all household members. Households consist of all persons living in or temporarily absent from the same residence. A food unit is one or more persons who live in the same household and purchase and prepare food together for home consumption. FoodShare Wisconsin Handbook 3.3.1.1. Parents and children under the age of 22 who reside together must be included in the food unit even if they do not purchase and prepare meals together. FoodShare Wisconsin Handbook 3.3.1.3; see also 7 CFR 273.1(b)(1).

In this case, the Petitioner conceded that she lives with her mother and siblings and that she lived with them during the overpayment period. Therefore, the earned and unearned income of the Petitioner, her mother and siblings must be counted in determining eligibility. The gross income limit for a household of four was \$3,926. The agency received employment verifications from the Petitioner’s employers and her mother’s employers. The agency produced the verifications showing actual wages. The agency also produced evidence of Petitioner’s unemployment compensation benefits and the unearned SSI received by Petitioner’s siblings. I reviewed the agency’s evidence as well as the overissuance worksheets. Based on the evidence, I conclude that the agency properly determined that the gross household income exceeded the gross income limit in each month from August, 2012 – November, 2013. Therefore, the agency properly seeks to recover an overissuance of \$2,297 for the period of August 6, 2012 – July 31, 2013 and \$718 for the period of August 12, 2013 – November 30, 2013.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of \$2,297 for the period of August 6, 2012 – July 31, 2013 and \$718 for the period of August 12, 2013 – November 30, 2013 based on client error in failing to accurately report household composition and income.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

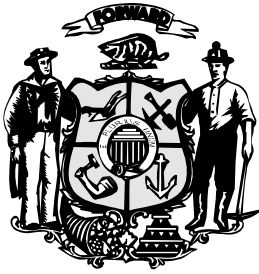
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of March, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 5, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability